SUPREME COURT OF THE UNITED STATES.

No. 2.

LESSEE OF JOHN HOLKER ET AL.,

vs.

WILLIAM LEMON ET AL.

CERTIFICATE OF DIVISION, &c., FROM CIRCUIT COURT U. S. FOR THE DISTRICT OF KENTUCKY.

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S. D. Langtree, Print.

UNITED STATES OF AMERICA,
Seventh Circuit Court, Kentucky District, sct.

Parties' Names.

JOHN DOE, on the demise of John Holker, Daniel Hughes, Paul Smith, Robert Smith, and Hugh Moore, plaintiffs,
against
WILLIAM LEMON, Joseph White, James Campbell, Daniel Beck, William Sylvester, Benjamin Thompson, and Joshua Smith, defendants. } In Ejectment.

Be it remembered, that at a Circuit Court of the United States of America, held in and for the District of Kentucky, at the Capitol, in the town of Frankfort, on the 22d day of November, in the year 1821, the following order was made in the cause above stated, to wit:

Order filing Record.

This day came the plaintiff aforesaid, in the above suit, by his counsel, and produced in court a transcript of the record and proceedings had in the District Court of Indiana; and moved the court, under an act of Congress in such cases made and provided, to have the same placed on the docket of this court for further proceedings to be had therein; which is ordered accordingly.

Record from Indiana.

Pleas at Corydon, in the State of Indiana, on the twelfth day of May, in the year one thousand eight hundred and twenty-one, before the Honorable Benjamin Parke, Judge of the United States' District Court for the Indiana district.

Be it remembered, that on the twelfth day of May, in the year one thousand eight hundred and twenty-one, John Doe, on the demise of John Holker, and others, filed his declaration in ejectment against Richard Roe; which declaration is in the words and figures following, to wit:

UNITED STATES OF AMERICA, *District of Indiana, sct.*

John Doe, a citizen of the State of Virginia, complains of Richard Roe, a citizen of the State of Indiana: That, whereas, John Holker, a citizen of the State of Virginia, on the 16th day of May, in the year 1818, at the district aforesaid, had demised to the said

John Doe a tract of land, situate, lying and being in Clarke County, State of Indiana, and district aforesaid, designated and known on the plat of the Illinois grant, being lot number twenty-two and containing a large number of acres, viz: five hundred acres, with the appurtenances. To have and to hold to the said John Doe, and his assigns, the said tract of land, with its appurtenances, from the 16th day of May, in the year aforesaid, for and during, and until the full end and term of fifty years, from thence next ensuing, and fully to be complete and ended.

And also, that, whereas Daniel Hughes, a citizen of the State of Maryland, on the 20th day of June, in the year 1818, at the district aforesaid, had demised to the said John Doe the said tract of land, situated as above mentioned, with its appurtenances; to have and to hold the same, to the said John Doe, and assigns, from the said 20th day of June, in the year aforesaid, for and during, and until the full end and term of fifty years, from thence next ensuing, and fully to be complete and ended.

And also, that, whereas Paul Smith, a citizen of the State of Maryland, on the 1st day of July, in the year 1818, at the district aforesaid, had demised to the said John Doe, the said tract of land, situated as above mentioned in the district, with its appurtenances; to have and to hold the same, to the said John Doe, and assigns, from the 1st day of July, in the year aforesaid, for and during, and unto the full end and term of fifty years, thence next, and to be fully complete and ended.

And also, that, whereas Robert Smith, a citizen of the State of Pennsylvania, on the 10th day of July, in the year 1818, at the district aforesaid, had demised to the said John Doe, the said tract of land, situated as above mentioned, in the district aforesaid, with its appurtenances; to have and to hold the same, to the said John Doe, and his assigns, from the said 10th day of July, in the year aforesaid, for and during, and unto the full end and term of fifty years, thence next ensuing, and fully to be complete and ended.

And also, whereas Hugh Moore, a citizen of the State of Pennsylvania, on the 25th day of July, in the year 1818, at the district aforesaid, had demised to the said John Doe, the said tract of land, situated as above mentioned, in the district aforesaid, with its appurtenances; to have and to hold the same, to the said John Doe, and his assigns, from the said 25th day of July, in the year aforesaid, for and during, and unto the full end and term of fifty years, thence next ensuing, and fully to be complete and ended.

By virtue of which said several demises, the said John Doe entered into the said several tracts of land, first, secondly, thirdly, fourthly, and fifthly, above mentioned and described, with their appurtenances, and was possessed thereof for the said several terms so to him thereof respectively granted, as aforesaid; and the said John Doe being so thereof possessed, the said Richard Roe afterwards, to wit, on the 20th day of August, 1818, with force and

arms, entered into the said several tracts of land, with their appurtenances, in which the said John Doe was so interested in manner and for the several terms aforesaid, which are not yet expired, and ejected the said John Doe from the said several farms; and other wrongs to the said John Doe then and there did, to the great damage of the said John Doe, and against the peace and dignity of the United States of America, and district aforesaid: wherefore, the said John Doe saith that he is injured, and hath sustained damages to the value of $500, and therefore he brings suit.

By his attorney,

J. H. FARNHAM.

To William Lemon, Joseph White, James Campbell, Daniel Beck, William Sylvester, Benjamin Thompson, Joshua Smith.

I am informed that you are in possession of, or claim title to, the premises in the foregoing declaration of ejectment mentioned, or to some part thereof; and being sued in this action as casual ejector, and having no claim or title to the premises, do advise you to appear on the first day of the next May term of the federal District Court, held at Corydon, for the State of Indiana, and district aforesaid, by some attorney of that court, and then and there, by a rule of that court, cause yourself to be made defendant in my stead; otherwise, I shall suffer judgment to be entered against me, and you will be turned out of possession.

RICHARD ROE.

STATE OF INDIANA, *Clarke County, sct.*

This day, personally came before the undersigned, a Justice of the Peace, in and for the county aforesaid, Laban Jones, and made oath that he did, on the 6th day of February, 1821, deliver to Joseph White, James Campbell, Daniel Beck, and Benjamin Thompson, and left at each of the houses of, with each of the wives of, William Lemon, William Sylvester, and Joshua Smith, the tenants in possession of the premises aforesaid, a true copy of the foregoing declaration and notice in ejectment; and informed them of the nature thereof, by telling them it was an action of ejectment for the lands which was in their occupation, and advised them to appear on the first day of the term of the court above mentioned, and defend said suit.

Certified this 1st day of March, 1821.

LEMUEL FORD, *J. P.* [L. S.]

And afterwards, to wit, on the day and year first written, came the plaintiff, by his counsel, and it appearing that the judge had heretofore been of counsel for the lessor of the plaintiff in the above cause, it is ordered that the fact be entered of record. And, on

motion of the plaintiff, by his counsel, it is further ordered that the said cause, with the proceedings had thereon, be certified to the United States Circuit Court for the State of Kentucky, in pursuance of an act of Congress, entitled "An act to amend an act, entitled 'An act for regulating process in the courts of the United States.'"

UNITED STATES OF AMERICA, *Indiana District, sct.*

I, Henry Hurst, Clerk of the United States' District Court, for the Indiana district, do hereby certify, that the foregoing is a true transcript of the proceedings of the cause therein mentioned, as the same stands of record in my office.

In testimony whereof, I have hereto set my hand, and affixed the seal of the said court, at Corydon, on the 18th day of July, in the year 1821, and of the independence of the United States the 46th.

H. HURST, *C. J. D.* [L. S.]

Common Order.

And afterwards, to wit, at a Circuit Court of the United States of America, held in and for the district of Kentucky, at the Capitol, in the town of Frankfort, at the May term of said court, in the year 1822, (until which time this cause was continued,) came the plaintiff in the aforegoing cause, by his attorney, and it appearing to the satisfaction of the court that the tenants in possession have been regularly served with a copy of the plaintiff's declaration and notice, and they failing to appear and plead to the plaintiff's said action, though solemnly called, came not, but made default.

It is therefore ordered, that unless they appear here on the first day of the next term of this court, and cause themselves to be made defendants, receive a declaration in a plea of trespass and ejectment, confess the lease, entry, and ouster, therein supposed, and plead thereto, or, on failure thereof, judgment will be entered against the casual ejector, and the writ of habere facias possessionem will be awarded the plaintiff.

Service of Common Order.

STATE OF INDIANA, *Clark County, sct.*

This day personally appeared Joseph White, before me, a Justice of the Peace in and for the county and State aforesaid, and made oath, that, on the 1st day of November, 1822, he delivered to William Lemon and Benjamin Thompson, and to William Sylvester, Joshua Smith, Daniel Beck, and to the wife of James Campbell, he not being at home, on the 2d day of November, a true copy of the above order and notice, and read them over to those who could not read themselves.

Given under my hand and seal, the 2d December, 1822.

JNO. JACKSON, *J. P.*

Order making Defendants.

And afterwards, to wit, at the November term of the court last aforesaid, in the year 1822, (until which time this cause was continued,) came the tenants aforesaid, by their attorney, and, on his motion, it is ordered that the common order, entered up herein against them, be set aside, and that they be admitted defendants in the room of Richard Roe, the casual ejector; and the said defendants severally agree to receive a declaration in a plea of trespass and ejectment, confess the lease, entry, and ouster, therein supposed, and to insist upon the title only at the trial. And it is ordered, that if, upon the trial of the issue, a verdict should be given for the defendants, or the plaintiff should not further prosecute for any other cause than the not confessing the lease, entry, and ouster, the lessors of the plaintiff shall pay the costs of this prosecution, if the plaintiff himself does not pay them.

Plea.

Whereupon, the said defendants, severally, receive a declaration in a plea of trespass and ejectment, confess the lease, entry, and ouster, therein supposed, and agree to insist upon the title only at the trial: and, for plea, severally say they are in no wise guilty of the trespass and ejectment, as the plaintiff against them hath declared; and of this, they put themselves upon the country; and the plaintiff likewise. Therefore, let a jury come here, &c.

Jury Sworn.

And afterwards, to wit, at the May term of the court aforesaid, in the year 1832, (being the 11th day of May,) until which term this cause was continued, came the parties aforesaid, by their attorneys; and thereupon, came a jury, to wit, John J. Vest, Thomas McGrain, Benjamin Hickman, James Shannon, David Graham, Langston Bacon, Daniel Epperson, Joseph Gray, Thomas V. Loofbourrow, William McBride, Thomas Jett, and Joseph S. Norris, who being elected, tried, and sworn well and truly to try the issues joined:

And afterwards, to wit, on a subsequent day of the term and year last aforesaid, to wit, the May term, 1832, on the 19th day of said month, came the parties aforesaid, by their attorneys, and produced in court the following statement of this cause, and adjourned questions; which is ordered to be entered of record, to wit:

The lessors of the plaintiff claimed under the following deed from the commissioners for apportioning the lands granted to the Illinois regiment, under the act of the State of Virginia, (here insert the deed marked A, the grant from Virginia to the commissioners,) and

the possession of tenants at and before the service of the declaration in ejectment, *was* admitted. The defendants, to show title out of the lessors of the plaintiff, and in themselves, offered in evidence to the jury, the following copy of a deed from Davis Floyd to Thomas T. Davis, mark B. (Here copy the deed, with its authentications.) And also offered in evidence, the deed from Davis Floyd and John T. Chum, to the defendant, William Lemon, mark C; (here copy the deed with its authentications;) and offered in evidence the transcript of the record and proceedings from Territorial Court of Indiana, in the words and figures following, marked D. (Here copy the transcript.) To the use of said papers, and each of them, as evidence in the cause, for the purpose for which they were offered, or any other, the plaintiff, by his counsel, objected; and, by consent, the jury was directed to find a verdict, subject to the opinion of the court, arising on the whole case; that is, if the law, in the opinion of the court, be for the plaintiff, then the verdict and judgment of the court to be for the plaintiff; but, if the law be for the defendants, then, the verdict and judgment to be entered for the defendants.

On consideration of the case, the following questions arose:

1st. Were the attachment and judgment, and the execution and sale of the sheriff valid, and authorized by the laws of the Territory of Indiana, or are the proceedings thereon void?

2d. Does said transcript contain sufficient evidence that a sale was made in conformity to the laws of said territory?

3d. By the laws in said territory, could a foreign attachment be sued out and maintained on the case stated in the transcript?

4th. By the laws of the territory, did the sheriff's deed pass title out of Holker to the purchaser, Davis; the deed not having been acknowledged in open court?

5th. Are the copies of the deeds, with their authentications, (without other proof,) evidence in the cause?

6th. By the laws of the territory, was the acknowledgment of the deed, in open court, necessary to vest a purchaser with title?

7th. Upon the evidence stated in this case, do*es* the defendants show a title out of the lessors of the plaintiff, and in themselves?

8th. Did the grant from Virginia, and the deed from the commissioners, pass title to the plaintiffs?

On which several questions, the court being divided, said questions are, in pursuance of the act of the Congress of the United States, adjourned to the Supreme Court for the opinion of that court, on said questions; and the clerk is directed to send up a transcript of the declaration of the plaintiff, and the record in the case, to the severing of the jury, and of the papers referred to in this statement.

A.—No. 22.

Commissioners to Holker—deed.

This indenture, made this eighth day of April, one thousand seven hundred and eighty-nine, between George R. Clark, William Clark, Alexander Breckinridge, James Francis Moore, William Croghan, Andrew Heth, and John Bayles, gentlemen, commissioners for apportioning the lands granted to the Illinois regiment, &c., of the one part, and John Holker, of the other part, witnesseth: That, whereas a certain tract or parcel of land, containing one hundred and forty-nine thousand acres, lying and being on the northwest side of the Ohio river, was granted by the commonwealth of Virginia, by patent, bearing date at Richmond, the fourteenth of December, one thousand seven hundred and eighty-six, unto certain commissioners, in trust, to be laid out and divided among the claimants, agreeable to an act of Assembly, entitled "An act for surveying and apportioning the lands granted to the Illinois regiment, and establishing a town within the said grant;" and one other act, to amend the act aforesaid, passed in the October session, one thousand seven hundred and eighty-six. The same being now laid out, the said commissioners, herein first mentioned, having received of the said John Holker the proportion of the fees payable to the register of the land office, for so much land as *as* is hereby to be conveyed, do grant and confirm unto the said John Holker, his heirs and assigns, a certain tract or parcel of land in the grant aforesaid, containing five hundred acres, number twenty-two, being a part of John Bailey's claim, allowed by the Board of Commissioners, in consequence of military service by him performed, in the regiment aforesaid, and became vested in said John Holker, by assignments, &c.; and bounded as followeth, to wit: beginning at a honey locust, sugar-tree and beech, the north corner of George Roger Clark's survey, number twenty-one, running thence with Clark's line, south forty degrees east three hundred poles, to two beeches; north fifty degrees east two hundred and sixty-six and two-thirds poles, crossing a small branch to a beech and ash; north forty degrees, west three hundred poles, to two beeches; thence south fifty degrees, west two hundred and sixty-six and two-thirds poles, to the beginning, with its appurtenances. To have and to hold the said tract of land, with its appurtenances, to the said John Holker and his heirs, for ever.

In witness whereof, the commissioners have hereunto set their hands and seals, the day and year first above written.

G. R. CLARK, [L. S.]
W. CLARKE, [L. S.]
ALEXR. BRECKINRIDGE, [L. S.]
JAMES F. MOORE, [L. S.]
W. CROGHAN, [L. S.]
ANDW. HETH, [L. S.]
JNO. BALEYS. [L. S.]

Signed, sealed and delivered, in presence of
ML. LACASSAGNE,
JNO. HARRISON,
JNO. HUGHES.

Endorsement on back of foregoing Deed.

Recorded at Vincennes, in the county of Knox, Territory of the U. S., N. W. of the river Ohio, this 1st day of August, 1798, in book A., page 400, 401, and 402.

STATE OF KENTUCKY, *Jefferson, to wit:* } July term, 1798.

The within deed was proved by the oaths of John Harrison and John Hughes, two of the subscribing witnesses thereto; and the signature of Michael Lacassagne, and of his having subscribed the same thereto as witness, was also proved by the oaths of said Harrison and Hughes, and ordered to be certified.

In witness whereof, I, Worden Pope, clerk of the said court, have *have* hereunto set my hand, this 20th day of July, 1798, in the 7th year of the commonwealth.

WORDEN POPE.

B.—Floyd's (sheriff) deed to Davis.

This indenture, made this twenty-second day of April, in the year of our Lord one thousand eight hundred and five, between Davis Floyd, acting sheriff of Clark county, in the Indiana Territory, of the one part, and Thomas T. Davis, of the town of Jeffersonville, in the Territory aforesaid, of the other part, witnesseth: That I, Davis Floyd, sheriff of Clark county, by virtue of a fieri facias directed to me, bearing date the second day of April, one thousand eight hundred and five, in the name of John Elgar, plaintiff, against John Holker and Nicholas Victor Mulberger, defendants, which said fieri facias issued by the clerk of the general court for the Territory aforesaid, and on a judgment obtained before the judges of the general court for the Indiana Territory, on a foreign attachment, for the sum of nine thousand and fourteen dollars one cent and a half, including costs, *by of* which said execution issued as aforesaid, and directed to the sheriff of Clarke county: I, the aforesaid Davis Floyd, sheriff of the county of Clarke, did, on the nineteenth instant, proceed to sell, (agreeable to my advertisements theretofore made,) all the right, title, and interest, of the said John Holker and Nicholas Victor Mulberger, to two certain lots of land in the Illinois grant, in the county of Clarke, known and designated on the plan of said grant, by numbers twenty-two and one hundred and eighty-seven, containing five hundred acres each. Therefore,

I, the aforesaid Davis Floyd, by virtue of my office, as sheriff, and conformably to laws of this Territory, do hereby convey to the aforesaid Thomas T. Davis, and his heirs, in fee simple, all the right, title, and interest, which the said John Holker and Nicholas Victor Mulberger had, at the time of the sale before mentioned, to the aforesaid lots of land. Given under my hand and seal, this first before written.

DAVIS FLOYD, [SEAL.]
Shff. Clark County.

Signed, sealed, and delivered, in presence of.

I, Nicholas Harrison, one of the United States' justices for Clark county, do hereby certify that Davis Floyd, sheriff of said county, did, this day, personally appear before me, and acknowledge the within instrument to be his act and deed.

Given under my hand, this 26th April, 1805.

NICHOLAS HARRISON,
J. P. C. C.

STATE OF INDIANA, *Clarke County.*

I, John Douthitt, recorder of the County of Clarke, do hereby certify, that the above and foregoing instrument of writing is a true copy of record in my office.

In witness whereof, I have hereto set my hand and private seal, (as there is no public seal,) this 24th day of April, 1823.

JOHN DOUTHITT, [SEAL.]
R. C. C.

STATE OF INDIANA, 2*d Judicial Circuit, st.*

I, John F. Ross, presiding judge of the circuit court of Clarke county, in the circuit and State aforesaid, do certify that John Douthitt, whose certificate and signature appears to the foregoing instrument, is the recorder of said county, and said certificate is in due form; and that the said Douthitt is the proper officer to certify in such cases.

In witness whereof, I have hereunto set my hand and seal, this 28th day of October, 1823.

JNO. F. ROSS. [SEAL.]

STATE OF INDIANA, *Clarke County, sc.*

I, Isaac Shelby, clerk of the circuit court of said county, within the 2d judicial circuit, in the State aforesaid, do certify that the Hon. John F. Ross, whose certificate, with his proper signature thereto subscribed, appears hereon written, is, and was at the time

of certifying and subscribing as aforesaid, the president judge of the said circuit in and for the county of Clarke, duly commissioned and qualified as such.

In testimony whereof, I have hereto subscribed my name, [L. S.] and affixed the seal of our said court, the 30th day of October, 1823.

I. SHELBY, *Clk.*

C.—McCalley, Floyd, and Chunn's deed to Lemon.

This indenture, made this 30th day of March, in the year of our Lord one thousand eight hundred and twelve, between Hugh McCalley, John T. Chunn, and Davis Floyd, commissioners specially appointed, of the one part, and William Lemon, of the county of Clarke, and Indiana Territory, of the other part: Whereas, Thomas T. Davis, deceased, late of the county aforesaid, by his certain obligation, dated the day of , did bind himself, his heirs, &c., to convey to the said William Lemon the quantity of one hundred and seventy-five acres in said county, and the said Thomas having departed this without doing the same, and the administrators of said Thomas being desirous to have the conveyance to the land aforesaid made, agreeable to the bond aforesaid, did petition the court of common pleas for the county of Clark, to appoint commissioners, pursuant to the laws of the Territory, to make the same; and the said court of common pleas, in virtue of an act entitled "An act authorizing the granting of letters of administration, and letters testamentary for the settlement of intestate estates, and for other purposes," did appoint the said Hugh McCalley, John T. Chunn, and Davis Floyd, commissioners as aforesaid, to convey to the said William the quantity of one hundred and seventy-five acres of land, part of the lot No. 22, agreeable to the aforesaid bond of the said Thomas T. Davis, deceased. Now, this indenture witnesseth, that the said Hugh McCalley, John T. Chunn, and Davis Floyd, for and in consideration of the sum of five shillings, to us in hand paid, the receipt whereof is hereby acknowledged, and in consideration of the power in us vested, have given, granted, bargained and sold, aliened, released, conveyed, and confirmed, and, by these presents, do give, grant, bargain, and sell, alien, release, convey, and confirm, unto the said William Lemon, his heirs and assigns, for ever, all the right, title, interest and claim, and estate, of which the said Thomas T. Davis, deceased, died seised or possessed, to a certain tract or parcel of land lying and being in the county aforesaid, being part of the number twenty-two, on the general plat of the Illinois grant, and bounded as follows, to wit: beginning at a beech on the original line, running thence south fifty degrees west fifty-two poles, to a stake; thence south fifty-five poles, to a stake, near the spring branch; thence south fifty degrees west seventy-five poles, to three beeches; thence

north forty degrees west ninety poles, to two beeches and a black gum; thence south fifty degrees west one hundred and fourteen poles, to a white ash and beech, on the original line; thence with the same, south forty degrees east one hundred and forty-six poles, to two beeches, marked c. t.; thence north fifty degrees east two hundred and seventy-four poles, to a beech and ash, c. u.; and thence north forty degrees west ninety-six poles, to the beginning, containing one hundred and seventy-five acres, be the same *more* or less. To have and to hold the before described tract or parcel of land, with all and singular the appurtenances and hereditaments thereunto belonging, or in anywise appertaining, to the said William Lemon, his heirs and assigns, to his and their only proper use, benefit, and behoof, for ever.

In testimony whereof, we, the said Hugh McCalley, John T. Chunn, and Davis Floyd, have hereunto set our hands and affixed our seals, this day and year first above written.

HUGH McCALLEY, [SEAL.]
JOHN T. CHUNN, [SEAL.]
DAVIS FLOYD. [SEAL.]

INDIANA TERRITORY, *Clarke County, to wit :*

Before me, the undersigned, one of the justices of the peace in and for said county, this , personally came the within named Hugh McCalley, John T. Chunn, and Davis Floyd, and acknowledged that they signed, sealed, and delivered the within indenture as their act and deed, for the purposes therein specified.

Given under my hand and seal, this 3d of April, 1812.

JAMES McCAMPBELL,
J. P. C. C.

STATE OF INDIANA, *Clark County.*

I, John Douthitt, recorder of the county of Clarke, do hereby certify that the above and foregoing instrument of writing is a true copy of record in my office.

In witness whereof, I have hereto set my hand and private seal, (as having no public seal,) this 24th day of April, 1823.

JOHN DOUTHITT, [SEAL.]
R. C. C.

STATE OF INDIANA, *2d Judicial Circuit, st.*

I, John F. Ross, president judge of the circuit court for Clarke county, in the circuit and State aforesaid, do certify that John Douthitt, whose certificate and signature appears to the foregoing instrument, is the recorder of said county, and whose said certifi-

cate is in due form; and that said Douthitt is the proper officer to certify in such cases.

In witness whereof, I have hereunto set my hand and seal, this 28th day of October, 1823.

JNO. F. ROSS. [SEAL.]

STATE OF INDIANA, *Clark County, sc.*

I, Isaac Shelby, clerk of the circuit court of Clarke county aforesaid, within the second judicial circuit in said State, do certify that the honorable John F. Ross, whose certificate appears hereon written, with his proper signature thereto subscribed, is, and was at the time of subscribing his name as aforesaid, the president judge of the said circuit, duly commissioned and qualified.

In testimony whereof, I have hereto subscribed my name, [L. S.] and affixed the seal of our said court, the 30th of October, 1823.

I. SHELBY, *Clerk.*

D.—Record.

Pleas before the honorable Henry Vanderburg and John Griffin, judges of the general court of the Indiana Territory, at the court-house, in Vincennes, on the seventh day of September, in the year of our Lord one thousand eight hundred and four.

JOHN EDGAR, *vs.* JOHN HOLKER and NICHOLAS V. MUHLBERGER. } Foreign attachment.

Be it remembered, that heretofore, to wit, on the day of , in the year , the said John Edgar filed in the clerk's office of the general court of the Territory aforesaid, an affidavit in the words and figures following, to wit:

INDIANA TERRITORY, *In the General Court.*

John Edgar, of Kaskaskia, in the county of Randolph, in the said Territory, Esq., maketh oath, and saith, that John Holker and Nicholas Victor Muhlberger are not at this time, as deponent verily believes, resident within this Territory, and that the said John Holker and Nicholas Victor Muhlberger are justly indebted to the said deponent in the sum of five thousand dollars and upward, for his damages, which he has sustained by reason of the breach and non-performance of *a* certain articles of agreement made between the said John Holker and Nicholas Victor Muhlberger and

the said John Edgar, bearing date the ninth day of January, one thousand seven hundred and eighty-four.

J. EDGAR.

Sworn at Kaskaskia, aforesaid, the 12th day November, 1802, before me, one of the said Territory.

JOHN GRIFFIN.

Be it remembered, that afterwards, to wit, the plaintiff sued out of the clerk's office an attachment, in the words and figures following, to wit:

INDIANA TERRITORY, *ss.*

The United States of America to the sheriff of Clarke county, greeting:

We command you that you attach all and singular the goods and chattels, rights and credits, lands, tenements, and hereditaments, of John Holker and Nicholas Victor Muhlberger, to be found in your bailiwick, and them safely keep, so that you have them ready before the judges of our general court, at our general court next to be holden at Vincennes, on the first Tuesday in March next, to answer unto John Edgar, in a plea of breach of covenant, to the damage of the John Edgar ten thousand dollars, as is said, and that you summon those persons in whose possession you may find such goods and chattels, lands and tenements, and hereditaments, so that they appear before our said judges of our general court, on the said first Tuesday in March next, as garnishee or garnishees; and further to do and perform what our said court shall then enjoin; and have then there this writ.

Witness, the honorable William Clarke, chief justice in and over said Territory, at Vincennes, this seventh day of September, one thousand eight hundred and two, and of the independence of the United States the twenty-seventh. Issued 25th January.

HE. HURST, *Clk. G. C.*

On which attachment is the following return, to wit:

By virtue of this writ to me directed, I have attached the following tracts of land, (viz.) of five hundred acres each: No. 22, 45, 181, 187, 136, 226, 204, 197, 241, 227, 212, 298, 164, 229, 215, 188, 297, 219, 191; also, 400 acres of No. 178; also 120 acres, part of No. 196, to wit, in the tract of country called the Illinois grant, in my bailiwick.

DAVIS FLOYD, *Shff. C. C.*

Be it remembered, that hereafter, to wit, on the day of in the year , the plaintiff filed, in the clerk's office aforesaid, of the court aforesaid, his declaration, in the words and figures following, to wit:

In the general court, Indiana Territory, March term, 1803.

RANDOLPH COUNTY, *ss.*

John Holker and Nicholas Victor Muhlberger, who are non-resident in the said Territory, were attached by all and singular their lands and tenements, goods, chattels, and effects, rights and credits, to answer unto John Edgar, in a plea of breach of covenant, and these are pledges to prosecute, to wit, John Doe and Richard Roe; and thereupon the said John Edgar, by John Rice Jones, his attorney, complains, that whereas, by certain articles of agreement, made at Philadelphia, to wit, at Kaskaskia, in the said county of Randolph, on the ninth day of January, in the year of our Lord one thousand seven hundred and eighty-four, between the said John Holker, by the name of John Holker, Esquire, of the city of Rouon, in the kingdom of France, then in the city of Philadelphia, and the said Nicholas Victor Muhlberger, by the name of Nicholas Victor Muhlberger, of the city of Dresden, in the electorate of Saxony, then in the city of Philadelphia, on the one part; and the said John Edgar, by the name of John Edgar, late a merchant in *port* Detroit, but then in the city of Philadelphia, on the other part; one part of which said articles, sealed with the seal of the said John Holker & Nicholas Victor Muhlberger, the said John Edgar bringeth here into court, bearing date the same day and year. It is witnessed that, in consideration of the trust and confidence the said Holker and Muhlberger reposed in the said John Edgar, and for the advancement and bettering their respective estates and fortunes, they, the said parties, had mutually agreed to be jointly concerned in the buying and selling the proper merchandise suitable for the Indian trade, under the (therein and herein) following condition: 1st, That (the said) John Holker and Nicholas Victor Muhlberger should procure each year, in Europe or America, on their credit and with their own funds, the necessary merchandise, (as per list which should be furnished,) to the amount of three thousand pounds sterling, wh*ile* should be, by them, or any one of them, or by their correspondents, forwarded to New York or Philadelphia, to such trading house as should be agreed on by the said John Holker and Nicholas Victor Muhlberger. 2dly, That (the said) John Edgar should take charge of the goods when delivered him in New York, and proceed with them to Post Detroit, by the way of Hudson river and Lake Erie, to sell or exchange the said goods for beaver skins and all other furs, to the best of the advantage of the company, and according to the advices and directions which would be transmitted him, from time to time, from the *fund*ing partners in Europe. 3dly, That the said John Edgar should use all possible diligence to make remittances, in the proper season, to the correspondent in New York, of all the furs he could collect or barter for goods. 4thly, That (the said) John Edgar should keep his counting-house and stores at the Post Detroit or Michilimakinak,

according to the instructions he might thereafter receive from the company, where the necessary books for their use should be kept, by such persons as would be appointed for the purpose. 5thly, All expenses incurred by the trade, house and store rent, clerk and servant hire, &c. &c., should be borne at the charge of the company. 6thly, It was agreed that, should the posts of Detroit and Michilimakinak not be garrisoned with American troops in the run of the (then) next ensuing summer, or should the funding partners think it more to their advantage to follow the trade in the Mississippi river, then (the said) John Edgar agreed to go to the Illinois country, by the way of Fort Pitt and the Ohio, and should proceed there as should be thereafter agreed by the parties, for the best of the common interest, and should continue there, if, after information and experience, the company should think more eligible to prosecute that trade, and that of the Mississippi and Missouri rivers. 7thly, That, in all cases, (the said) John Edgar should have, for his trouble, in conducting and managing the (said) above business, one-fourth part of the neat proceeds which might arise from the sale of the goods in the Indian country, and of all the peltry in Europe, the company being to notify him, before his departure, to what houses he should consign the returns, at New York, if he went to the lakes; or to New Orleans, if he went to the Illinois country. 8thly, That the partnership should stand and be in force for the term of three years, or three successive seasons; at the expiration of which time, the said John Edgar engaged to go back, to settle his accounts with his partners, or their attorney or attorneys, if by them required; provided always, and it was thereby agreed, that in case of the death of any of the partners, that company should be dissolved, and the accounts settled within six months after the notification of the same to the surviving partners. Provided also, that, in case the said partners should not think proper to continue the pursuit of that trade, it might be at any time dissolved; but, to that effect, the partner withdrawing should be obliged to give one year's warning previous to the dissolution of the same. Lastly, That in case of disagreement in the settling of the amounts, or any other difficulty which might arise during the partnership, it was thereby agreed that it would be submitted to two arbitrators, one of which to be chosen by each party, and these two to choose the third, by the determination of two of which, the parties mutually agree to abide.

In witness whereof, the parties bound themselves for the execution of the therein and herein above articles, to each other, his heirs, executors, and administrators, and to the others, and their heirs, executors, and administrators, in the penal sum of three thousand pounds sterling money of Great Britain, by the said articles, as by the said articles fully appear. And he, the said John Edgar, in fact saith, that the said posts of Detroit and Michilimakinak, nor either of them, were not garrisoned by the American troops in the

run of the said summer next ensuing the date of the said articles of agreement, and that the said funding partners, to wit, the said John Holker and Nicholas Victor Muhlberger, having thought it more to their advantage to follow the trade in the said articles mentioned, in the Mississippi river, advised and directed the said John Edgar to proceed to the Illinois country, by the way of Fort Pitt and the Ohio; and that, in consequence of such directions, and of the said articles of agreement, he, the said John Edgar, afterwards, to wit, on the day of , in the said year of our Lord, took charge, from New York, of a quantity of goods and merchandise, which they, the said John Holker and Nicholas Victor Muhlberger, furnished and delivered, as and for the amount to be by them procured, according to the said articles, in the first year of the said partnership term of three years, and proceeded, by the said way of Fort Pitt and the Ohio, to the Illinois country, with the same goods, where he arrived on the first day of November, in the same year, to wit, at Kaskaskia in the said county of Randolph. And the said John Edgar, in fact, further saith, that he continued at Kaskaskia, aforesaid, by the advice and direction of them, the said John Holker and Nicholas Victor Muhlberger, from the said time of his arrival there, until the expiration of the said term of three years or seasons; and that, during the said term of three years, the said partnership was not dissolved, by either of the said parties to the said articles, but same continued in full force during all that time. And the said John Edgar, in fact, further saith, that although he, the said John Edgar, hath well and faithfully done and performed all and singular the covenants, grants, and agreements, contained in the said articles, on the part of him, the said John Edgar, to be done and fulfilled; and that, although a list of the necessary merchandise for the said trade, for the two last years of the said partnership term, was furnished them, the said John Holker and Nicholas Victor Muhlberger, afterwards, to wit, on the first day of November, in the year one thousand seven hundred and eighty-five, by the said John Edgar; nevertheless, the said John Holker and Nicholas Victor Muhlberger, nor either of them, did not, in any or either of the last two years of the said term, and during the continuance of the said partnership, procure, either in Europe or America, or elsewhere, on their own credit, and with their or either of their own funds, or otherwise, the necessary merchandise for the partnership trade, to the amount of three thousand pounds sterling, or any part or penny thereof; neither did they, or any of them, or any of their correspondents, forward the same goods, or any part thereof, either to New York or Philadelphia, to any trading house or houses at either of those places, according to the form, force, and effect of the said articles of agreement, on the part of the said John Holker and Nicholas Victor Muhlburger to be done and performed, and of the covenant and agreement of the said John Holker and Nicholas Victor Muhlburger, so made with the said John Edgar, in

that respect, as aforesaid, but neglected so to do, contrary to the form and effect of their said covenant, and of the said articles.— And so the said John Edgar saith, that the said John Holker and Nicholas Victor Muhlburger (although often requested) have not kept, nor hath either of them kept, with the said John Edgar, the said covenant so made with him, the said John Edgar, in that respect as aforesaid, but have broken it, and have hitherto denied, and still deny, to keep the same with the said John Edgar, whereby the said John Edgar saith he is injured, and hath damage to the value of ten thousand dollars, and thereof he bringeth suit, and so forth.

INDIANA TERRITORY.

John Edgar putteth in his place John Rice Jones, his attorney, against John Holker and Nicholas Victor Muhlburger, in a plea of breach of covenant.

And afterwards, to wit, at a court begun and held at Vincennes, on the fourth day of September, in the year 1804, and continued from day to day, by adjournment, until the 7th day and year first aforesaid, came the plaintiff by his counsel, and the defendants being three times solemnly called, came not, but made default; and it being sufficiently proven to the court that notice of the said attachment having issued, had been advertised in a newspaper in the State of Kentucky, and, also, in a newspaper in this Territory for the several times, and in manner and form required by the laws of the Territory; therefore, it is considered by the court, that the plaintiff do recover his damages by reason of the premises; but, because it is unknown to the court what damage the plaintiff hath sustained by occasion of the premises, it is therefore commanded that the sheriff cause a jury to come before the United States' judges, to inquire what damages the plaintiff hath sustained by reason of the premises aforesaid; and thereupon, came a jury, to wit, Daniel McClure, Benjamin Beeckes, Wm. *Curretben*, William Purcill, Samuel Applegate, James Johnson, Frederick Mehl, William Johnson, John Youngman, George Ferguson, William Purriell, and Thomas Johnson, twelve good and lawful men, who being elected, tried, and sworn, well and truly to inquire of damages, upon their oath say that the plaintiff hath sustained damage, by reason of the premises, to eight thousand nine hundred and forty-two dollars and forty cents.

Therefore, it is considered by the court, that the plaintiff do recover against the defendants the sum aforesaid, by the jurors in their verdict in form aforesaid, assessed, together with his costs and charges by him about his suit in that behalf expended; and the said defendant in mercy, &c.

And thereupon, came the said John Edgar, by his attorney aforesaid, and prayed execution for the said damages and costs to be

made to him, and to be levied out of the estates attached. Therefore, at the prayer of the said John Edgar, it is further considered and adjudged, that if the said John Edgar shall find two pledges to be added in the same, to appear to any suit or suits that shall or may be brought by the said defendants within twelve months next ensuing, and to pay unto such defendants all sums of money which, on trial to be had thereon, shall appear to have been received and not justly due and owing to the said John Edgar, together with costs of suit. Whereupon, the said John Edgar then and there found two sufficient pledges, approved of by the said court, to wit, John Rice Jones and William McIntosh, who entered into bond to the said defendants in the penal sum of seventeen thousand, eight hundred and eighty-four dollars and eighty cents, to be filed in the clerk's office, with condition there under written, that the said John Edgar shall appear to any suit or suits that shall or may be brought by such defendants, within the space of twelve months next ensuing; and shall pay unto such defendants all sums of money which, on trial to be had thereon, shall appear to have been received and not justly due and owing to him, the said John Edgar, together with costs of suit: whereupon, it is further adjudged that the said John Edgar have execution for the said damages so assessed, together with his costs, to be levied out of the estates and property so attached; which execution is in the words and figures following, to wit:

INDIANA TERRITORY, *ss.*

The United States to the sheriff of Clarke county, greeting: We command you, that of the following tracts of land, (viz.) No. twenty-two, of five hundred acres; No. forty-five, of five hundred acres; No. one hundred and eighty-one, of five hundred acres; No. one hundred and eighty-seven, of five hundred acres; No. one hundred and thirty-six, of five hundred acres; No. two hundred and twenty-six, of five hundred acres; No. two hundred and four, of five hundred acres; No. one hundred and ninety-seven, of five hundred acres; No. two hundred and forty-one, of five hundred acres; No. two hundred and twenty-seven, of five hundred acres; No. two hundred and twelve, of five hundred acres; No. two hundred and ninety-eight, of five hundred acres; No. one hundred and sixty-four, of five hundred acres; No. two hundred and twenty-nine, of five hundred acres; No. two hundred and fifteen, of five hundred acres; No. one hundred and eighty-eight, of five hundred acres; No. two hundred and ninety-seven, of five hundred acres; No. two hundred and nineteen, of five hundred acres; No. one hundred and twenty-one, of five hundred acres; also, four hundred acres, of No. one hundred and seventy-eight; also, one hundred and twenty acres, part of No. one hundred and ninety-six; situate in the Illinois grant, attached in your hands, by virtue of an attach-

ment in your hands, by virtue of an attachment issued out of our general court, you levy the sum of nine thousand and fourteen dollars one cent and a half, which John Edgar, lately in *in* our general court, recovered against John Holker and *Frederick Augustus* Muhlburger, for his damages which he sustained, as well by reason of the non-performance of certain covenants and agreements, by the said John Holker and *Frederick Augustus* , with the said John Edgar entered into, as for his costs and charges by him about his suit in that behalf expended, whereof the said John Holker and *Frederick Augustus* Muhlburger are convicted, as appears to us of record; and have you that money before our general court, at our court to be holden at Vincennes, on the first Tuesday in April next, to render to the said John Edgar for his damages, costs, and charges aforesaid; and have then there this writ.

Witness the honorable Thomas T. Davis, chief justice in and over said Territory, at Vincennes, the fourth day of [L. S.] February, one thousand eight hundred and four, and of our independence the twenty-ninth.

HE. HURST, *Clk. G. C.*

On which execution is the following return, to wit: "In conformity to the within command, I have advertised and sold the within tracts of land, but could not make the deeds, owing to an error in the date of this writ, and the misnaming of one of the defendants."

DAVIS FLOYD,
Sheriff Clark County.

Afterwards, to wit, on the 2d day of April, A. D. eighteen hundred and five, came the plaintiff, and sued out of the clerk's office of said court his certain execution, with the endorsements thereon, in the words and figures following, to wit:

INDIANA TERRITORY, *ss.*

The United States to the sheriff of Clarke county, greeting: We command you that of the following tracts of land, to wit, number twenty-two, forty-five, one hundred and eighty-one, one hundred and eighty-seven, one hundred and thirty-six, two hundred and twenty-six, two hundred and four, one hundred and ninety-seven, two hundred and forty-one, two hundred and twenty-seven, two hundred and twelve, two hundred and ninety-eight, one hundred and sixty-four, two hundred and twenty-nine, two hundred and fifteen, one hundred and eighty-eight, two hundred and ninety-seven, two hundred and nineteen, and one hundred and ninety-one, of five hundred acres each; also, four hundred acres, of number one hundred and seventy-eight; also, one hundred and twenty acres,

part of No. one hundred and ninety-six; situate in the Illinois grant, and attached in your hands, by virtue of a certain writ of attachment, issued out of our general court of the said Territory, you cause to be made the sum of nine thousand and fourteen dollars and one and one-half cents, which John Edgar, lately in our general court, recovered against John Holker and Nicholas Victor Muhlburger, as well for his damages which he sustained by reason of the breach of a certain covenant by them, the said John Holker and Nicholas Victor Muhlburger, to the same John Edgar lately made, as for his costs and charges by him about his suit in that behalf expended, whereof the said John Holker and Nicholas Victor Muhlburger are convicted, as appears to us of record; and have that money before our judges of our said court, at our court to be held at Vincennes, on the first Tuesday in September next, to render to the said John Edgar for his damages, costs, and charges aforesaid; and have then there this writ.

Witness the Hon. Thomas T. Davis, chief justice in and [L. S.] over said Territory, at Vincennes, the 2d day of April, one thousand eight hundred and five, and of our independence the 29th.

HE. HURST, *Clk. G. C.*

The sheriff's return on said writ is in the words following, to wit: "By virtue of the within execution, I sold to John Edgar and John Rice Jones, 5120 acres of the lands within named. I have conveyed the same to them, for $2,560. I also sold to John Harrison 2000 acres, for $1020; 1000 of which I conveyed to him; the other thousand he declines receiving a deed for, and refuses to pay for either: the $3,010 I am ready to satisfy. I also sold to Thomas T. Davis 2000 acres, for 1,020 dollars, which I conveyed and am also ready to satisfy. Also, 500 acres to Peter Bloom, for $250, for which I am also ready to satisfy: making, in the whole, which am ready to satisfy, $4,280.

DAVIS FLOYD,
Sheriff Clark County.

Amended Return.—In addition to the return hereto, I also sold to William Ferguson 500 acres, No. 191, at 50 cents per acre; also, four hundred acres, part of No. 178, at 50 cents per acre; which tracts I have deeded to him. The whole amount ready to satisfy is $4,280.

DAVIS FLOYD, *Shff. C. C.*

I, the undersigned, clerk of the Supreme Court of the State of Indiana, into which court the records and proceedings of the general court of the late Indiana Territory have been transferred by law, do hereby certify that the foregoing is a full, true, and correct copy

of the judgment and proceedings in the cause aforesaid, as the same remain in said court.

In testimony whereof, I have hereunto subscribed my name, [L. S.] and affixed the seal of said court, at Corydon, this 8th day of January, A. D. 1823.

H. P. COBURN, *C. S. C.*

STATE OF INDIANA, *sct.*

I, James Scott, presiding judge of the Supreme Court of the State of Indiana aforesaid, do certify that H. P. Coburn, whose signature is annexed to the above certificate, is clerk of the said Supreme Court, and that his attestation is in due form. Given under my hand and seal, this 25th day of April, A. D. 1823.

JAMES SCOTT, [SEAL.]

UNITED STATES OF AMERICA,
7th Circuit Court, Kentucky District, sct.

I, John H. Hanna, clerk of the seventh Circuit Court of the United States of America, in and for the district of Kentucky, do hereby certify that the foregoing 31 pages contain a full, true, and complete transcript of the record and proceedings in the cause therein mentioned, of Doe dem. Holker, &c., against Wm. Lemon, &c., in ejectment, so far as the same has progressed; the same being made out in pursuance to the order in the adjourned questions before herein stated.

In testimony whereof, I have hereunto subscribed my name, [L. S.] and affixed the seal of said court, this 6th day of September, 1832, and in the 57th year of our independence.

JNO. H. HANNA.